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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/737,209	12/14/2000	Charles A. Bastyr	11306.1	1339

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NEIL K. NYDEGGER
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348 Olive Street
San Diego, CA 92103

EXAMINER

MATHEW, FENN C

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 07/16/2003

6

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/737,209

Applicant(s)

BASTYR ET AL.

Examiner

Fenn Mathew

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 26 is/are allowed.
- 6) ☒ Claim(s) 1-5, 8-16, 18 and 20-25 is/are rejected.
- 7) ☒ Claim(s) 6, 7, 17 and 19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1, 9, 10, 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Bernstein (U.S. Patent No. 5,037,088). Referring to claim 1, Bernstein discloses a device comprising a first arm (24) having a first end and a second end, a second arm (22) having a first end and a second end, a joint assembly (34) defining an axis of rotation, the first end of the first arm being attached to the joint assembly to establish a fixed relationship between the first arm and the axis, with the first end of the second arm being pivotally attached to the joint assembly for rotation of the second arm about an axis in a first direction and in a second direction, a means (28) attached to the second end of the first arm for stabilization of the second end of the first arm during a movement of the first arm about the stabilized second end thereof, and a means (see abstract) mounted on the joint assembly for establishing a resistance to the rotation of the second arm about the axis.

4. Referring to claim 9, Bernstein discloses the stabilizing means being a foot pedal.

5. Referring to claim 10, Bernstein discloses the device having a handle (26) attached to the second end of the second arm.

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6. Referring to claim 11, Bernstein discloses the handle being selectively oriented relative to the second arm.

7. Referring to claim 21, Bernstein discloses a structure that can be used in a method including the steps of providing an exercise device including a first arm having a first end and a second end, a second arm having a first end and a second end, a joint assembly defining an axis of rotation, the first end of the first arm being attached to the joint assembly to establish a fixed relationship between the first arm and an axis, with the first end of the second arm being pivotally attached to the joint assembly for rotation of the second arm about the axis in a first direction and in a second direction, establishing a resistance to the rotation of the second arm in the first direction and stabilizing the exercise device at the second end of the first arm of the exercise device during a movement of the first arm about the stabilized second end thereof.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 2-5, 8, 13-16 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bernstein. (U.S. Patent No. 5,244,446) in view of Ferber (U.S. Patent No. 5,445,581) and Haaheim (U.S. Patent No. 4,618,139). Referring to claim 2,

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Bernstein discloses the claimed device including a shaft mounted on the joint assembly, but lacks a one-way clutch member. Haaheim teaches an exercise device including a clutch member (see abstract). It would have been obvious to one having ordinary skill in the art at the time of invention to provide the device of Bernstein with a clutch member as taught by Haaheim in order to prevent the rotational resistance assembly from rotating in an unwanted direction. Further, Bernstein, does not teach the specific structure of the joint assembly. Ferber teaches an analogous device including a cone member (37) having a surface, and a cup member (35) having a surface dimensioned for mating engagement with the surface of the cone member at an interface there between to establish resistance. It would have been obvious to provide Bernstein, as modified above, with the cone member and cup member taught by Ferber in order to further effect resistance during exercise.

3. Referring to claim 3, Bernstein, as modified by Haaheim and Ferber above discloses a plunger (Ferber 45) a force transfer mechanism positioned between the plunger and the cone member (18), and a rotatable knob (Bernstein151).

4. Referring to claim 4, Bernstein, as modified by Haaheim and Ferber above discloses the surface of the cone member and cup member tapered.

5. Referring to claim 5, Bernstein, as modified by Haaheim and Ferber above discloses a spring (Ferber 32 and a thrust bearing (19).

6. Referring to claim 8, Bernstein, as modified by Haaheim and Ferber above discloses a friction liner positioned at the interface between the surface of the cone member and the surface of the cup member.

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7. Referring to claim 13, Bernstein discloses an exercise device comprising a first arm (24) having a first and second end, a second arm (22) having a first and second end, a joint assembly (34) defining an axis of rotation, the first end of the first arm being attached to the joint assembly to establish a fixed relationship between the first arm and the axis, and the first end of the second arm being pivotally attached to the joint assembly for rotation of the second arm about the axis in a first direction, means (28) attached to the second end of the first arm for stabilization during a movement of the first arm about the stabilized second end thereof, and means mounted on the joint assembly for establishing resistance to rotation. Bernstein discloses the claimed device including a shaft mounted on the joint assembly, but lacks a one-way clutch member. Haaheim teaches an exercise device including a clutch member (see abstract). It would have been obvious to one having ordinary skill in the art at the time of invention to provide the device of Bernstein with a clutch member as taught by Haaheim in order to prevent the rotational resistance assembly from rotating in an unwanted direction and as an art recognized alternative for rotational resistance. Further, Bernstein does not teach the specific structure of the joint assembly. Ferber teaches an analogous device including a cone member (37) having a surface, and a cup member (35) having a surface dimensioned for mating engagement with the surface of the cone member at an interface there between to establish resistance. It would have been obvious to provide Bernstein, as modified above, with the cone member and cup member taught by Ferber in order to further effect resistance during exercise.

8. Referring to claim 14, Bernstein, as modified by Haaheim and Ferber above, discloses a foot pedal attached to the second end of the first arm for stabilization of the first arm.

9. Referring to claim 15, Bernstein, as modified by Haaheim and Ferber above, discloses the surfaces of the cone member and up member being tapered. (See Ferber fig. 1).

10. Referring to claim 16, Bernstein, as modified by Haaheim and Ferber above discloses a plunger (Ferber 45) a force transfer mechanism positioned between the plunger and the cone member (18), and a rotatable knob (Bernstein 151).

11. Referring to claim 20, Bernstein, as modified by Haaheim and Ferber above discloses a friction liner positioned at the interface between the surface of the cone member and the surface of the cup member.

12. Referring to claim 22-24, Bernstein, as modified by Haaheim and Ferber above have disclosed the claimed structure. The method of use would have been obvious to one with ordinary skill in the art.

13. Claims 12, 18, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bernstein in view of Haaheim, and Ferber as applied to claims above, and further in view of Delman (U.S. Patent No. 6,244,988). The modified Bernstein device discloses the claimed invention except for a position/load sensor. Delman teaches an exercise device using a sensor that generates signals of magnitude of resistance and a computer for monitoring the signals. It would have been obvious to one having ordinary skill in the art at the time of invention to provide the modified

Bernstein device with the load sensor and computer taught by Delman in order to allow a user to have exact values of resistance during exercise.

Allowable Subject Matter

14. Claim 26 is allowed. Applicant has incorporated limitations of previously mentioned claim 17 into independent claim 13. See reasons below.

15. Claims 6-7, 17, and 19 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The following is a statement of reasons for the indication of allowable subject matter: Referring to claim 17, the prior art of record fails to disclose or make obvious the feature of a spring loaded detent being mounted on the cup member to urge against the knob to provide an aural signal in response to the rotation of the knob. The prior art also fails to disclose an exercise device having a cup member with an annular groove centered on an axis of rotation and lying a plane substantially perpendicular thereto.

Response to Arguments

16. Applicant's arguments with respect to claims 1-25 have been considered but are moot in view of the new ground(s) of rejection. Although Bernstein teaches a hydraulic means for rotational resistance, the use of a clutch is well known in the rotational

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resistance art, and would be an obvious substitution that the skilled artisan would be capable of making.

Conclusion

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn Mathew whose telephone number is (703) 305-2846. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.



NICHOLAS D. LUCCHESI
SUPERVISORY PATENT EXAMINER
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Jcm
fcm
July 13, 2003